

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

IN THE MATTER OF:	)	
	)	
THE DOW CHEMICAL COMPANY	)	DOCKET NO. RCRA-06-2010-0933
PLAQUEMINE, LOUISIANA	)	
	)	
RESPONDENT	)	
_____	)	

**CONSENT AGREEMENT AND FINAL ORDER**

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant) and The Dow Chemical Company, Plaquemine, Louisiana in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

**I. PRELIMINARY STATEMENT**

1. This proceeding for the assessment of civil penalties and the issuance of a compliance order is brought by EPA pursuant to Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), and is simultaneously commenced and concluded through the issuance of this Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.37.

2. Notice of this action was given to the State of Louisiana prior to the issuance of this CAFO, as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

3. For the purposes of this proceeding, the Respondent admits the jurisdictional allegations herein; however, the Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4. The Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth therein, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. Compliance with all the terms and conditions of this CAFO shall resolve only those violations which are set forth herein.

6. The Respondent consents to the issuance of the CAFO hereinafter recited and consents to the issuance of the Compliance Order contained therein.

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **A. PRELIMINARY ALLEGATIONS**

7. The Dow Chemical Company (Respondent) is a corporation incorporated under the laws of the State of Delaware and authorized to do business in the State of Louisiana.

8 "Person" is defined in L.A.C. 33:V.109 [40 C.F.R. §§ 260.10 and 270.2] as "an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, an any interstate body, or the federal government or any agency of the federal government."

9. The Respondent is a "person" as that term is defined in L.A.C. 33:V:109 [40 C.F.R. §§ 260.10 and 270.2].

10. "Owner" is defined in L.A.C. 33:V:109 (40 C.F.R. § 260.10) as "the person who owns a facility or part of a facility."

11. "Operator" is defined in L.A.C. 33:V:109 (40 C.F.R. § 260.10) as "whoever has legal authority and responsibility for a facility that generates, transports, treats, stores or disposes of any hazardous waste."

12. "Owner or operator" is defined in 40 C.F.R. § 270.2 as "the owner or operator of any facility or activity subject to regulation under RCRA."

13. "Facility" is defined in L.A.C. 33:V:109 (40 C.F.R. § 260.10) as meaning "all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, etc.)."

14. The Respondent operates a chemical manufacturing plant located at 21255 Highway 1, Plaquemine, Louisiana, EPA Identification No. LAD 008187080.

15. The plant identified in Paragraph 14 is a "facility" as that term is defined in L.A.C. 33:V:109 (40 C.F.R. § 260.10).

16. The Respondent is the "owner" and/or "operator" of the facility identified in Paragraph 14, as those terms are defined in L.A.C. 33:V:109 (40 C.F.R. §§ 260.10 and 270.2).

17. On or about June 2 - 4, 2008, and February 11 - 12, 2009, the Respondent's facility was inspected by a representative of EPA pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

## **B. VIOLATIONS**

### **Count One - Disposal of Hazardous Waste Into Unpermitted Surface Impoundments**

18. Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and L.A.C. 33:V.305.A. [40 C.F.R. § 270.1(b)] provide that a permit is required for the treatment, storage, and disposal of any hazardous waste as identified or listed in L.A.C. 33:V.Chapter 49.

19. The Dow Return Canal System (Canal) is used as a source of cooling water and a conveyance for wastewater to Final Outfall 001. Water is pulled from the Mississippi River upstream from the facility and returned to the Mississippi River downstream from the facility through Final Outfall 001. The Canal consists of several segments: CWR (Cooling Water Return) Canal A, and Canals B, C, D, E, and F. CWR Canal A receives flow from Canals B, C, D, E, and F, and includes the wastewaters from all internal outfalls within the manufacturing areas as well as stormwater runoff, once through cooling water, and utility wastewaters flows. The daily flow through the Canal is approximately 597 million gallons per day.

20. The Canal was constructed in the late 1950's as an earthen ditch, and has an earthen bottom.

21. "Surface impoundment" is defined in L.A.C. 33:V.109 (40 C.F.R. § 260.10) as "a facility or part of a facility, which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds and lagoons."

22. The Canal is a "surface impoundment" as that term is defined by L.A.C. 33:V.109 (40 C.F.R. § 260.10).

23. The Respondent discharges wastewater from its EDC/Solvents Plant into the Solvents East Ditch through Internal Outfall 201<sup>1</sup>.

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<sup>1</sup> Internal Outfall 201 was originally identified as Outfall 005 in the 1977 and 1980 NPDES Permits, as Internal Outfall 521 in the 1988 and 2002 NPDES Permits, and as Internal Outfall 201 in the 2010 NPDES Permit.

24. The Solvents East Ditch has an earthen bottom.

25. The Solvents East Ditch is a "surface impoundment" as that term is defined by L.A.C. 33:V.109 (40 C.F.R. § 260.10).

26. The wastewater in the Solvents East Ditch flows into the CWR Canal A.

27. The wastewater in the Solvents East Ditch is not treated prior to it flowing into the CWR Canal A.

28. The wastewater being discharged is a "solid waste", as that term is defined in L.A.C. 33:V.109 (40 C.F.R. § 261.2).

29. According to the Respondent's readings of the pH monitors installed at Internal Outfall 201, the Respondent recorded pH readings of less than 2 and greater than 12.5 on the following days:

- A. January 16, 2006;
- B. February 8, 2006;
- C. May 17, 2006;
- D. June 28, 2006;
- E. August 3, 2006;
- F. August 6, 2006;
- G. August 9, 2006;
- H. August 23, 2006;
- I. August 31, 2006;
- J. September 12, 2006;
- K. February 19, 2007;
- L. June 12, 2007;
- M. June 18, 2007;
- N. July 9, 2007;
- O. July 18, 2007;
- P. July 20, 2007;
- Q. July 21, 2007;
- R. July 29, 2007;
- S. September 7, 2007;
- T. September 24, 2007;
- U. September 25, 2007

V. March 19, 2008; and  
W. April 23, 2008.

30. Solid waste with pH readings of less than 2 and greater than 12.5 is a hazardous waste which exhibits the characteristic of corrosivity. L.A.C. 33:V.4903.C (40 C.F.R. § 261.22).

31. On the dates identified in Paragraph 29 above, the Respondent discharged a characteristic hazardous waste (D002) from its EDC/Solvents Plant into the Solvents East Ditch through Internal Outfall 201, which then flowed into the CWR Canal A.

32. The Respondent discharges wastewater which contains a listed hazardous waste (K016) from its EDC/Solvents Plant into the Solvents East Ditch through Internal Outfall 201, which then flows into the CWR Canal A.

33. The Respondent discharges wastewater which contains a listed hazardous waste (K019) from its EDC/Solvents Plant into the Solvents East Ditch through Internal Outfall 201, which then flows into the CWR Canal A.

34. The mixture of solid waste and a listed hazardous waste is a hazardous waste. L.A.C. 33:V.109 [40 C.F.R. § 261.3(a)(2)(iv)].

35. D002, K016, and K019 are hazardous waste identified or listed in L.A.C. 33:V.Chapter 49 (40 C.F.R. Part 261, Subparts C and D). L.A.C. 33:V.4901.C & 4093.C.

36. Internal Outfall 201 is not a "point source discharge" as that term is defined by Section 502(14) of the Clean Water Act, 33 U.S.C. § 1362(14) and 40 C.F.R. § 122.2.

37. The Solvents East Ditch is not "waters of the United States" as that term is defined by 33 C.F.R. § 328.3, 40 C.F.R. § 122.2, and 40 C.F.R. § 230.3(s).

38. The Canal is not "waters of the United States" as that term is defined by 33 C.F.R. § 328.3, 40 C.F.R. § 122.2, and 40 C.F.R. § 230.3(s)(1).

39. "Disposal" is defined in L.A.C. 33:V.109 (40 C.F.R. § 260.10) as "the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous waste into or on any land or water so that such hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters of the state."

40. The Respondent is disposing of hazardous waste into the Solvents East Ditch.

41. The Respondent is disposing of hazardous waste in the Canal.

42. To date, the Respondent has neither applied for nor received a RCRA permit to allow the disposal of hazardous waste into the Solvents East Ditch.

43. To date, the Respondent has neither applied for nor received a RCRA permit to allow the disposal of hazardous waste into the Canal.

44. Therefore, the Respondent has violated and continues to violate Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and L.A.C. 33:V.305.A [40 C.F.R. § 270.1(b)] by disposing of hazardous waste into unpermitted surface impoundments.

#### **Count Two - Failure to Meet Land Disposal Restrictions**

45. L.A.C. III.V.2223.A (40 C.F.R. § 268.40) provides that a prohibited waste identified in L.A.C. 33:V.2299.Appendix. Table 2, may be land disposed only if it meets the requirements found in Table 2.

46. L.A.C. 33:V.2229.Appendix, Table 2 (40 C.F.R. § 268.40) identifies, among other things, the following prohibited wastes and treatment standard requirements:

A. D002 - its hazardous waste characteristic (corrosivity) must be removed and must meet treatment standards in L.A.C. 33:V.2233 (40 C.F.R. § 268.48).

B. K016 - the following constituents must be at or below the following values:

Hexachlorobenzene - 0.055  
Hexachlorobutadiene - 0.055  
Hexachlorocyclopentadiene - 0.057  
Hexachloroethane - 0.055  
Tetrachloroethylene - 0.056

C. K019 - the following constituents must be at or below the following values:

bis(2-Chloroethyl)ether - 0.033  
Chlorobenzene - 0.057  
Chloroform - 0.046  
p-Dichlorobenzene - 0.090  
1,2-Dichloroethane - 0.21  
Fluorene - 0.059  
Hexachloroethane - 0.055  
Naphthalene - 0.059  
Phenanthrene - 0.059  
1,2,4,5-Tetrachlorobenzene - 0.055  
Tetrachloroethylene - 0.056  
1,2,4-Trichlorobenzene - 0.055  
1,1,1-Trichloroethane - 0.054

47. "Land disposal" is defined in L.A.C. 33:V.2203 (40 C.F.R. § 268.2) as meaning the "placement in or on the land, except in a corrective action management unit or staging pile, and includes, but is not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt-dome formation, salt-bed formation, underground mine or cave, or placement in a concrete vault, or bunker intended for disposal purposes.

48. The Respondent placed D002 hazardous waste into the Solvents East Ditch without treating the waste to remove its corrosive characteristic.

49. The Respondent placed D002 hazardous waste into the CWR Canal A without treating the waste to remove its corrosive characteristic.

50. The Respondent placed K016 hazardous waste into the Solvents East Ditch without treating the waste to LDR limits.

51. The Respondent placed K016 hazardous waste into the CWR Canal A without treating the waste to LDR limits.

52. The Respondent placed K019 hazardous waste into the Solvents East Ditch without treating the waste to LDR limits.

53. The Respondent placed K019 hazardous waste into the CWR Canal A without treating the waste to LDR limits.

54. Therefore, the Respondent violated L.A.C. 33:V.2223 [40 C.F.R. § 268.40] by disposing of hazardous wastes into surface impoundments without meeting the applicable treatment standards.

### **III. COMPLIANCE ORDER**

55. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), the Respondent is hereby **ORDERED** to take the following actions and provide evidence of compliance within the time period specified below:

A. Upon the effective date of this CAFO, the Respondent shall cease all discharging and/or placement activities of D002 into the Respondent's Solvents East Ditch or the Canal without first treating the hazardous waste to meet the limits in 40 C.F.R. §§ 268.40 and 268.48.

B. Upon the effective date of this CAFO, the Respondent shall cease all discharging and/or placement activities of K016, K019, and any other hazardous waste listed in L.A.C. 33:V.4901 [40 C.F.R. Part 261, Subpart D] into the Respondent's Solvents East Ditch or the Canal, or any other land disposal unit at the facility.

C. Within fifteen (15) days of the effective date of this CAFO, the Respondent shall submit a certification to EPA that it has ceased all discharging and/or placement activities of any hazardous waste listed in L.A.C. 33:V.4901 [40 C.F.R. Part 261, Subpart D] into the Respondent's Solvents East Ditch or Canal, or any other land disposal unit at the facility.

D. Within sixty (60) days of the effective date of this CAFO, the Respondent shall submit a closure plan for the Solvents East Ditch and the CWR Canal A to the Louisiana Department of Environmental Quality (LDEQ) for approval, with a copy sent to EPA for review. The plan shall meet the requirements of L.A.C. 33:III.2911 (40 C.F.R. § 264.228) and L.A.C. 33:I.Chapter 13 (RECAP). In addition, the plan shall require the Respondent to sample the sediment of the Solvents East Ditch and the CWR Canal A for volatile organic analytes (VOA's), semi-volatile analytes (SVOC's), total metals, and pH using the procedures set forth in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846. The Respondent shall implement the plan as approved or modified by LDEQ according to the schedule set by LDEQ.

E. In all instances in which this Compliance Order requires written submissions to EPA, each submission must be accompanied by the following certification:

"I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

F. Copies of all documents required by this Compliance Order shall be sent to the following:

Chief, Compliance Enforcement Section (6EN-HE)  
Hazardous Waste Enforcement Branch  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Lourdes Iturralde  
Waste Enforcement Group  
Office of Environmental Compliance  
Louisiana Department of Environmental Quality  
602 North 5<sup>th</sup> Street  
Baton Rouge, LA 70802

#### **IV. TERMS OF SETTLEMENT**

##### **A. CIVIL PENALTY**

56. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the seriousness of the alleged violations, the Respondent's good faith efforts to comply with the applicable regulations, and the June 2003 RCRA Civil Penalty Policy, it is Ordered that the Respondent be assessed a civil penalty of **SIX HUNDRED EIGHTY-SEVEN THOUSAND, FOUR HUNDRED TWENTY DOLLARS (\$687,420)**.

57. Within thirty (30) days of the effective date of this CAFO, the Respondent shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank  
Government Lockbox 979077 US EPA Fines & Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

**PLEASE NOTE: Docket number RCRA-06-2010-0933 shall be clearly typed on the check to ensure proper credit.** If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the CAFO. The Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Chief, Compliance Enforcement Section (6EN-HE)  
Hazardous Waste Enforcement Branch  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Lorena Vaughn  
Regional Hearing Clerk (6RC-D)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

The Respondent's adherence to this request will ensure proper credit is given when penalties are received in the Region.

58. The Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

59. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

60. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional

\$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

**B. PARTIES BOUND**

61. The provisions of this CAFO shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, and assigns. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

**C. STIPULATED PENALTIES**

62. In addition to any other remedies or sanctions available to EPA, if the Respondent fails or refuses to comply with Section III of this CAFO, the Respondent shall pay stipulated penalties in the following amounts for each day during which each failure or refusal to comply continues:

<u>Period of Noncompliance</u>	<u>Penalty Per Violation Per Day</u>
1st through 15th day	\$ 500
16th through 30th day	\$ 750
31st day and beyond	\$ 1,000

Penalties shall accrue from the date of the noncompliance until the date the violation is corrected, as determined by EPA.

63. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 57 herein. Interest and late charges shall be paid as stated in Paragraphs 59 - 60 herein.

64. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of the Respondent's violation of this CAFO or of the statutes and regulations upon which this agreement is based, or for the Respondent's violation of any applicable provision of law.

**D. DISPUTE RESOLUTION**

65. If the Respondent objects to any decision or directive of EPA in regard to Section III, the Respondent shall notify the following persons in writing of its objections, and the basis for those objections, within fifteen (15) calendar days of receipt of EPA's decision or directive:

Associate Director  
Hazardous Waste Enforcement Branch (6EN-H)  
Compliance Assurance and Enforcement Division  
U.S. EPA - Region 6  
1445 Ross Avenue  
Dallas, TX 75202-2733

Chief, RCRA Enforcement Branch (6RC-ER)  
Office of Regional Counsel  
U.S. EPA - Region 6  
1445 Ross Avenue  
Dallas, TX 75202-2733

66. The Associate Director of the Hazardous Waste Enforcement Branch or his/her designee (Associate Director), and the Respondent shall then have an additional fifteen (15) calendar days from EPA's receipt of the Respondent's written objections to attempt to resolve the dispute. If an agreement is reached between the Associate Director and the Respondent, the

agreement shall be reduced to writing and signed by the Associate Director and the Respondent and incorporated by reference into this CAFO.

67. If no agreement is reached between the Associate Director and the Respondent within that time period, the dispute shall be submitted to the Director of the Compliance Assurance and Enforcement Division or his/her designee (Division Director). The Division Director and the Respondent shall then have a second 15-day period to resolve the dispute. If an agreement is reached between the Division Director and the Respondent, the resolution shall be reduced to writing and signed by the Division Director and Respondent and incorporated by reference into this CAFO. If the Division Director and the Respondent are unable to reach agreement within this second 15-day period, the Division Director shall provide a written statement of EPA's decision to the Respondent, which shall be binding upon the Respondent and incorporated by reference into the CAFO.

68. If the Dispute Resolution process results in a modification of this CAFO, the modified CAFO must be approved by the Regional Judicial Officer and filed pursuant to Section IV.F (Modifications).

#### **E. NOTIFICATION**

69. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

EPA: Chief, Compliance Enforcement Section (6EN-HE)  
Hazardous Waste Enforcement Branch  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Respondent:

**F. MODIFICATION**

70. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of both parties, and approved by a Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

**G. RETENTION OF ENFORCEMENT RIGHTS**

71. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondent of Federal or State laws, regulations, or permitting conditions.

72. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from the Respondent's facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

**H. INDEMNIFICATION OF EPA**

73. Neither EPA nor the United States Government shall be liable for any injuries or damages to person or property resulting from the acts or omissions of the Respondent, their officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out the activities required by this CAFO, nor shall EPA or the United States Government be held out as a party to any contract entered into by the Respondent in carrying out the activities required by this CAFO.

**I. COSTS**

74. Each party shall bear its own costs and attorney's fees. Furthermore, the Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

**J. EFFECTIVE DATE**

75. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:**

**FOR THE RESPONDENT:**

Date: \_\_\_\_\_

\_\_\_\_\_  
The Dow Chemical Company

**FOR THE COMPLAINANT:**

Date: \_\_\_\_\_

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John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

**CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 2011, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was were placed in the United States Mail, certified mail, return receipt requested, \_\_\_\_\_ addressed to the following:

J. Scott Janoe  
Baker Botts L.L.P.  
One Shell Plaza  
910 Louisiana  
Houston, TX 77002-4995

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**CONFIDENTIAL SETTLEMENT COMMUNICATION**

**THE DOW CHEMICAL COMPANY  
PLAQUEMINE, LOUISIANA**

**RCRA CIVIL PENALTY SUMMARY**

Count One - Disposal of Hazardous Waste Into Unpermitted  
Surface Impoundments - Sections 3005(a) and (e) of RCRA,  
42 U.S.C. §§ 6925(a) and (e), and L.A.C. 33:V.305.A.  
[40 C.F.R. § 270.1(b)] ..... \$343,710

Count Two - Failure to Meet Land Disposal Restrictions  
L.A.C. 33:V.2223.A. [40 C.F.R. § 268.40] ..... \$343,710

**TOTAL PROPOSED PENALTY ..... \$687,420**

Subject: Dow Chemical Consent Agreement and Final Order

Date: 09/17/2010 01:42 PM

From: Evan Pearson/R6/USEPA/US

To: jminadeo@dow.com

Cc: Ryan Rosser/R6/USEPA/US@EPA

Bcc:

Sent by: Evan Pearson/R6/USEPA/US

Distribution List: <jminadeo@dow.com>

Some months ago, I contacted you to let you know that I was replacing Rebekah Reynolds on this case. After reviewing the case, we have decided to move forward with the case. I have attached a copy of the cover letter discussing our proposal, a draft Consent Agreement and Final Order, the RCRA Civil Penalty Policy, and the Adjusted Penalty Matrices. If you have any questions, please feel free to call.



Dow CAFO Cover Letter - 9-17-10.pdf



Draft Dow Chemical CAFO - 9-17-10.doc



RCRA Civil Penalty Policy - June 2003.pdf



Adjusted Penalty Matrices 2009.pdf

Evan L. Pearson  
Senior Enforcement Counsel (6RC-ER)  
RCRA Enforcement Branch  
Office of Regional Counsel  
U.S. EPA - Region 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733  
Phone - (214) 665-8074  
Fax - (214) 665-3177  
E-Mail - pearson.evan@epa.gov

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733

September 17, 2010

Via e-mail - [jminadeo@dow.com](mailto:jminadeo@dow.com)

**CONFIDENTIAL SETTLEMENT COMMUNICATION**

Joe Minadeo  
Senior Attorney  
The Dow Chemical Company  
Louisiana Operations  
P.O. Box 150  
Plaquemine, LA 70765-0150

Re: Draft Consent Agreement and Final Order - The Dow Chemical Company, Plaquemine, Louisiana

Dear Joe:

As you know, on June 2 - 4, 2008 and February 11 - 12, 2009, the United States Environmental Protection Agency, Region 6 (EPA) inspected the Dow Chemical Company in Plaquemine, Louisiana (Dow). Based on the information we have received, EPA is alleging that Dow violated the Resource Conservation and Recovery Act (RCRA) by disposing of hazardous waste in unpermitted surface impoundments and failing to meet land disposal restrictions. These violations are set forth in the enclosed draft Consent Agreement and Final Order (CAFO).

The draft CAFO proposes a \$687,420 civil penalty. EPA is offering Dow a short period of time to conduct prefiling negotiations. To assist you in your preparation for the negotiations, I have enclosed a copy of our proposed penalty calculations, the RCRA Civil Penalty Policy, and the Adjusted Penalty Matrices for the RCRA Civil Penalty Policy. Please note that the proposed penalty is applicable only to the period of prefiling negotiations. EPA reserves the right to change the penalty in accordance with the RCRA Civil Penalty Policy if settlement is not reached. If you wish to engage in settlement negotiations, please call me at your earliest convenience to set up a settlement conference. If you have any questions, please feel free to e-mail me at [pearson.evan@epa.gov](mailto:pearson.evan@epa.gov) or call me at (214) 665-8074.

Sincerely,

A handwritten signature in black ink that reads "Evan L. Pearson".

Evan L. Pearson  
Senior Enforcement Counsel

Enclosures

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

IN THE MATTER OF:	)	
	)	
THE DOW CHEMICAL COMPANY	)	DOCKET NO. RCRA-06-2010-0933
PLAQUEMINE, LOUISIANA	)	
	)	
RESPONDENT	)	
_____	)	

**CONSENT AGREEMENT AND FINAL ORDER**

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant) and The Dow Chemical Company, Plaquemine, Louisiana in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

**I. PRELIMINARY STATEMENT**

1. This proceeding for the assessment of civil penalties and the issuance of a compliance order is brought by EPA pursuant to Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) and is simultaneously commenced and concluded through the issuance of this Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.37.

2. Notice of this action was given to the State of Louisiana prior to the issuance of this CAFO, as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

3. For the purposes of this proceeding, the Respondent admits the jurisdictional allegations herein; however, the Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4. The Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth therein, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. Compliance with all the terms and conditions of this CAFO shall resolve only those violations which are set forth herein.

6. The Respondent consents to the issuance of the CAFO hereinafter recited and consents to the issuance of the Compliance Order contained therein.

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **A. PRELIMINARY ALLEGATIONS**

7. The Dow Chemical Company (Respondent) is a corporation incorporated under the laws of the State of Delaware and authorized to do business in the State of Louisiana.

8 "Person" is defined in L.A.C. 33:V.109 [40 C.F.R. §§ 260.10 and 270.2] as "an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, an any interstate body, or the federal government or any agency of the federal government."

9. The Respondent is a "person" as that term is defined in L.A.C. 33:V:109 [40 C.F.R. §§ 260.10 and 270.2].

10. "Owner" is defined in L.A.C. 33:V:109 (40 C.F.R. § 260.10) as "the person who owns a facility or part of a facility."

11. "Operator" is defined in L.A.C. 33:V:109 (40 C.F.R. § 260.10) as "whoever has legal authority and responsibility for a facility that generates, transports, treats, stores or disposes of any hazardous waste."

12. "Owner or operator" is defined in 40 C.F.R. § 270.2 as "the owner or operator of any facility or activity subject to regulation under RCRA."

13. "Facility" is defined in L.A.C. 33:V:109 (40 C.F.R. § 260.10) as meaning "all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, etc.)."

14. The Respondent operates a chemical manufacturing plant located at 21255 Highway 1, Plaquemine, Louisiana, EPA Identification No. LAD 008187080.

15. The plant identified in Paragraph 14 is a "facility" as that term is defined in L.A.C. 33:V:109 (40 C.F.R. § 260.10).

16. The Respondent is the "owner" and/or "operator" of the facility identified in Paragraph 14, as those terms are defined in L.A.C. 33:V:109 (40 C.F.R. §§ 260.10 and 270.2).

17. On or about June 2 - 4, 2008, and February 11 - 12, 2009, the Respondent's facility was inspected by a representative of EPA pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

## **B. VIOLATIONS**

### **Count One - Disposal of Hazardous Waste Into Unpermitted Surface Impoundments**

18. Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and L.A.C. 33:V.305.A. [40 C.F.R. § 270.1(b)] provide that a permit is required for the treatment, storage, and disposal of any hazardous waste as identified or listed in L.A.C. 33:V.Chapter 49.

19. The Dow Return Canal System (Canal) is used as a source of cooling water and a conveyance for wastewater to Outfall 001. Water is pulled from the Mississippi River upstream from the facility and returned to the Mississippi River downstream from the facility through Outfall 001. The daily flow through the Canal is approximately 550 million gallons per day.

20. The Canal was constructed in the late 1950's as an earthen ditch, and has an earthen bottom.

21. "Surface impoundment" is defined in L.A.C. 33:V.109 (40 C.F.R. § 260.10) as "a facility or part of a facility, which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds and lagoons."

22. The Canal is a "surface impoundment" as that term is defined by L.A.C. 33:V.109 (40 C.F.R. § 260.10).

23. The Respondent discharges wastewater from its EDC/Solvents Plant into the East Solvents Ditch through Internal Outfall 521.

24. The East Solvents Ditch has an earthen bottom.

25. The East Solvents Ditch is a "surface impoundment" as that term is defined by L.A.C. 33:V.109 (40 C.F.R. § 260.10).

26. The wastewater in the East Solvents Ditch flows into the Canal.

27. The wastewater in the East Solvents Ditch is not treated prior to it flowing into the Canal.

28. The wastewater being discharged is a "solid waste", as that term is defined in L.A.C. 33:V.109 (40 C.F.R. § 261.2).

29. According to the Respondent's readings of the pH monitors installed at Internal Outfall 521, the Respondent recorded pH readings of less than 2 and greater than 12.5 on the following days:

- A. January 16, 2006;
- B. February 8, 2006;
- C. May 17, 2006;
- D. June 28, 2006;
- E. August 3, 2006;
- F. August 6, 2006;
- G. August 9, 2006;
- H. August 23, 2006;
- I. August 31, 2006;
- J. September 12, 2006;
- K. February 19, 2007;
- L. June 12, 2007;
- M. June 18, 2007;
- N. July 9, 2007;
- O. July 18, 2007;
- P. July 20, 2007;
- Q. July 21, 2007;
- R. July 29, 2007;
- S. September 7, 2007;
- T. September 24, 2007;
- U. September 25, 2007
- V. March 19, 2008; and
- W. April 23, 2008.

30. Solid waste with pH readings of less than 2 and greater than 12.5 is a hazardous waste which exhibits the characteristic of corrosivity. L.A.C. 33:V.4903.C (40 C.F.R. § 261.22).

31. On the dates identified in Paragraph 29 above, the Respondent discharged a characteristic hazardous waste (D002) from its EDC/Solvents Plant into the East Solvents Ditch, through Internal Outfall 521, which then flowed into the Canal.

32. The Respondent discharges wastewater which contains a listed hazardous waste (K016) from its EDC/Solvents Plant into the East Solvents Ditch through Internal Outfall 521, which then flows into the Canal.

33. The Respondent discharges wastewater which contains a listed hazardous waste (K019) from its EDC/Solvents Plant into the East Solvents Ditch through Internal Outfall 521, which then flows into the Canal.

34. The mixture of solid waste and a listed hazardous waste is a hazardous waste. L.A.C. 33:V.109 [40 C.F.R. § 261.3(a)(2)(iv)].

35. D002, K016, and K019 are hazardous waste identified or listed in L.A.C. 33:V.Chapter 49 (40 C.F.R. Part 261, Subparts C and D). L.A.C. 33:V:4901.C & 4093.C.

36. Internal Outfall 521 is not a "point source discharge" as that term is defined by Section 502(14) of the Clean Water Act, 33 U.S.C. § 1362(14) and 40 C.F.R. § 122.2.

37. The East Solvents Ditch is not "waters of the United States" as that term is defined by 33 C.F.R. § 328.3, 40 C.F.R. § 122.2, and 40 C.F.R. § 230.3(s).

38. The Canal is not "waters of the United States" as that term is defined by 33 C.F.R. § 328.3, 40 C.F.R. § 122.2, and 40 C.F.R. § 230.3(s)(1).

39. "Disposal" is defined in L.A.C. 33:V.109 (40 C.F.R. § 260.10) as "the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous waste into or on any land or water so that such hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters of the state."

40. The Respondent is disposing of hazardous waste into the East Solvents Ditch.

41. The Respondent is disposing of hazardous waste in the Canal.

42. To date, the Respondent has neither applied for nor received a RCRA permit to allow the disposal of hazardous waste into the East Solvents Ditch.

43. To date, the Respondent has neither applied for nor received a RCRA permit to allow the disposal of hazardous waste into the Canal.

44. Therefore, the Respondent has violated and continues to violate Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and L.A.C. 33:V.305.A [40 C.F.R. § 270.1(b)] by disposing of hazardous waste into unpermitted surface impoundments.

#### **Count Two - Failure to Meet Land Disposal Restrictions**

45. L.A.C. III.V.2223.A (40 C.F.R. § 268.40) provides that a prohibited waste identified in L.A.C. 33:V.2299.Appendix. Table 2, may be land disposed only if it meets the requirements found in Table 2.

46. L.A.C. 33:V.2229.Appendix, Table 2 (40 C.F.R. § 268.40) identifies, among other things, the following prohibited wastes and treatment standard requirements:

A. D002 - its hazardous waste characteristic (corrosivity) must be removed and must meet treatment standards in L.A.C. 33:V.2233 (40 C.F.R. § 268.48).

B. K016 - the following constituents must be at or below the following values:

Hexachlorobenzene - 0.055  
Hexachlorobutadiene - 0.055  
Hexachlorocyclopentadiene - 0.057  
Hexachloroethane - 0.055  
Tetrachloroethylene - 0.056

C. K019 - the following constituents must be at or below the following values:

bis(2-Chloroethyl)ether - 0.033  
Chlorobenzene - 0.057  
Chloroform - 0.046  
p-Dichlorobenzene - 0.090  
1,2-Dichloroethane - 0.21

Fluorene - 0.059  
Hexachloroethane - 0.055  
Naphthalene - 0.059  
Phenanthrene - 0.059  
1,2,4,5-Tetrachlorobenzene - 0.055  
Tetrachlorethylene - 0.056  
1,2,4-Trichlorobenzene - 0.055  
1,1,1-Trichloroethane - 0.054

47. "Land disposal" is defined in L.A.C. 33:V.2203 (40 C.F.R. § 268.2) as meaning the "placement in or on the land, except in a corrective action management unit or staging pile, and includes, but is not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt-dome formation, salt-bed formation, underground mine or cave, or placement in a concrete vault, or bunker intended for disposal purposes.

48. The Respondent placed D002 hazardous waste into the East Solvents Ditch without treating the waste to remove its corrosive characteristic.

49. The Respondent placed D002 hazardous waste into the Canal without treating the waste to remove its corrosive characteristic.

50. The Respondent placed K016 hazardous waste into the East Solvent Ditch without treating the waste to LDR limits.

51. The Respondent placed K016 hazardous waste into the Canal without treating the waste to LDR limits.

52. The Respondent placed K019 hazardous waste into the East Solvents Ditch without treating the waste to LDR limits.

53. The Respondent placed K019 hazardous waste into the Canal without treating the waste to LDR limits.

54. Therefore, the Respondent violated L.A.C. 33:V.2223 [40 C.F.R. § 268.40] by disposing of hazardous wastes into surface impoundments without meeting the applicable treatment standards.

### **III. COMPLIANCE ORDER**

55. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), the Respondent is hereby Ordered to take the following actions and provide evidence of compliance within the time period specified below:

A. Upon the effective date of this CAFO, the Respondent shall cease all discharging and/or placement activities of D002 into the Respondent's East Solvents Ditch or Canal System without first treating the hazardous waste to meet the limits in 40 C.F.R. §§ 268.40 and 268.48.

B. Upon the effective date of this CAFO, the Respondent shall cease all discharging and/or placement activities of K016, K019, and any other hazardous waste listed in L.A.C. 33:V.4901 [40 C.F.R. Part 261, Subpart D] into the Respondent's East Solvents Ditch or Canal System, or any other land disposal unit, unless specifically authorized by 40 C.F.R. Part 268.

C. Within fifteen (15) days of the effective date of this CAFO, the Respondent shall submit a certification to EPA that it has ceased all discharging and/or placement activities of any hazardous waste listed in L.A.C. 33:V.4901 [40 C.F.R. Part 261, Subpart D] into the Respondent's East Solvents Ditch or Canal System, or any other land disposal unit, unless specifically authorized by 40 C.F.R. Part 268.

D. Within sixty (60) days of the effective date of this CAFO, the Respondent shall submit a Sampling and Analysis Plan (SAP) to EPA for approval. The purpose of SAP is to collect and analyze surface water and sediment samples from the Return Canal near the East

Solvents Plant. The SAP shall address the procedures and type of equipment to be used for sample collection activities, the number of samples to be collected, the volume of samples to be collected, and the method to be used for each sample analysis. EPA will approve or modify the proposed SAP. The SAP, as approved or modified by EPA, shall be implemented by the Respondent according to the schedule set forth therein.

E. In all instances in which this Compliance Order requires written submissions to EPA, each submission must be accompanied by the following certification:

"I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

F. Copies of all documents required by this Compliance Order shall be sent to the following:

Ragan Broyles, Acting Associate Director  
Hazardous Waste Enforcement Branch  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733  
Attention: Ryan Rosser (6EN-HE)

Lourdes Iturralde  
Waste Enforcement Group  
Office of Environmental Compliance  
Louisiana Department of Environmental Quality  
602 North 5<sup>th</sup> Street  
Baton Rouge, LA 70802

#### **IV. TERMS OF SETTLEMENT**

##### **A. CIVIL PENALTY**

56. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the Findings of Fact and Conclusions of

Law, which are hereby adopted and made a part hereof, and upon consideration of the seriousness of the alleged violations, the Respondent's good faith efforts to comply with the applicable regulations, and the June 2003 RCRA Civil Penalty Policy, it is Ordered that the Respondent be assessed a civil penalty of **SIX HUNDRED EIGHTY-SEVEN THOUSAND, FOUR HUNDRED TWENTY DOLLARS (\$687,420).**

57. Within thirty (30) days of the effective date of this CAFO, the Respondent shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank  
Government Lockbox 979077 US EPA Fines & Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

**PLEASE NOTE: Docket number RCRA-06-2010-0933 shall be clearly typed on the check to ensure proper credit.** If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the CAFO. The Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Ryan Rosser  
Hazardous Waste Enforcement Officer  
Compliance Enforcement Section (6EN-HE)  
Hazardous Waste Enforcement Branch  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Lorena Vaughn  
Regional Hearing Clerk (6RC-D)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

The Respondent's adherence to this request will ensure proper credit is given when penalties are received in the Region.

58. The Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

59. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

60. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

## **B. PARTIES BOUND**

61. The provisions of this CAFO shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, and assigns. The undersigned

representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

**C. STIPULATED PENALTIES**

62. In addition to any other remedies or sanctions available to EPA, if the Respondent fails or refuses to comply with Paragraphs 55.C, 55.D, or 55.E of this CAFO, the Respondent shall pay stipulated penalties in the following amounts for each day during which each failure or refusal to comply continues:

<u>Period of Noncompliance</u>	<u>Penalty Per Violation Per Day</u>
1st through 15th day	\$ 500
16th through 30th day	\$ 750
31st day and beyond	\$ 1,000

Penalties shall accrue from the date of the noncompliance until the date the violation is corrected, as determined by EPA.

63. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 57 herein. Interest and late charges shall be paid as stated in Paragraphs 59 - 60 herein.

64. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of the Respondent's violation of this CAFO or of the statutes and regulations upon which this agreement is based, or for the Respondent's violation of any applicable provision of law.

**D. DISPUTE RESOLUTION**

65. If the Respondent objects to any decision or directive of EPA in regard to Section III, the Respondent shall notify the following persons in writing of its objections, and the basis for those objections, within fifteen (15) calendar days of receipt of EPA's decision or directive:

Associate Director  
Hazardous Waste Enforcement Branch (6EN-H)  
Compliance Assurance and Enforcement Division  
U.S. EPA - Region 6  
1445 Ross Avenue  
Dallas, TX 75202-2733

Chief, RCRA Enforcement Branch (6RC-ER)  
Office of Regional Counsel  
U.S. EPA - Region 6  
1445 Ross Avenue  
Dallas, TX 75202-2733

66. The Associate Director of the Hazardous Waste Enforcement Branch or his/her designee (Associate Director), and the Respondent shall then have an additional fifteen (15) calendar days from EPA's receipt of the Respondent's written objections to attempt to resolve the dispute. If an agreement is reached between the Associate Director and the Respondent, the agreement shall be reduced to writing and signed by the Associate Director and the Respondent and incorporated by reference into this CAFO.

67. If no agreement is reached between the Associate Director and the Respondent within that time period, the dispute shall be submitted to the Director of the Compliance Assurance and Enforcement Division or his/her designee (Division Director). The Division Director and the Respondent shall then have a second 15-day period to resolve the dispute. If an agreement is reached between the Division Director and the Respondent, the resolution shall be reduced to writing and signed by the Division Director and Respondent and incorporated by

reference into this CAFO. If the Division Director and the Respondent are unable to reach agreement within this second 15-day period, the Division Director shall provide a written statement of EPA's decision to the Respondent, which shall be binding upon the Respondent and incorporated by reference into the CAFO.

68. If the Dispute Resolution process results in a modification of this CAFO, the modified CAFO must be approved by the Regional Judicial Officer and filed pursuant to Section IV.E (Modifications).

#### **E. NOTIFICATION**

69. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

EPA:           Hazardous Waste Enforcement Branch  
                  Compliance Assurance and Enforcement Division  
                  U.S. EPA - Region 6  
                  1445 Ross Avenue  
                  Dallas, TX 75202-2733  
                  Attention: Ryan Rosser

Respondent:

**F. MODIFICATION**

70. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of both parties, and approved by a Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

**G. RETENTION OF ENFORCEMENT RIGHTS**

71. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondent of Federal or State laws, regulations, or permitting conditions.

72. Except as specifically provided in this CAFO, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from Respondent's facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

**H. INDEMNIFICATION OF EPA**

73. Neither EPA nor the United States Government shall be liable for any injuries or damages to person or property resulting from the acts or omissions of the Respondent, their officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out the activities required by this CAFO, nor shall EPA or the United States

Government be held out as a party to any contract entered into by the Respondent in carrying out the activities required by this CAFO.

**I. COSTS**

74. Each party shall bear its own costs and attorney's fees. Furthermore, the Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

**J. EFFECTIVE DATE**

75. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:**

**FOR THE RESPONDENT:**

Date: \_\_\_\_\_

\_\_\_\_\_  
The Dow Chemical Company

**FOR THE COMPLAINANT:**

Date: \_\_\_\_\_

\_\_\_\_\_  
John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

**FINAL ORDER**

Pursuant to the Section 3008 of RCRA, 42 U.S.C. § 6928, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the Compliance Order and terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: \_\_\_\_\_

\_\_\_\_\_  
Michael J. Barra  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 2010, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was were placed in the United States Mail, certified mail, return receipt requested, \_\_\_\_\_ addressed to the following:

\_\_\_\_\_

**THE DOW CHEMICAL COMPANY  
PLAQUEMINE, LOUISIANA**

**RCRA CIVIL PENALTY SUMMARY**

Count One - Disposal of Hazardous Waste Into Unpermitted  
Surface Impoundments - Sections 3005(a) and (e) of RCRA,  
42 U.S.C. §§ 6925(a) and (e), and L.A.C. 33:V.305.A.  
[40 C.F.R. § 270.1(b)] ..... \$343,710

Count Two - Failure to Meet Land Disposal Restrictions  
L.A.C. 33:V.2223.A. [40 C.F.R. § 268.40] ..... \$343,710

**TOTAL PROPOSED PENALTY ..... \$687,420**

# CONFIDENTIAL SETTLEMENT COMMUNICATION

## RCRA PENALTY CALCULATION WORKSHEET

Company Name: The Dow Chemical Company  
Address: Plaquemine, Louisiana

Requirement Violated: Count One - Disposal of Hazardous Waste Into Unpermitted Surface Impoundments - Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and L.A.C. 33:V.305.A. [40 C.F.R. § 270.1(b)]

1. Gravity based penalty from matrix (midpoint) ..... \$ 13,455
  - (a) Potential for Harm ..... Moderate
  - (b) Extent of Deviation ..... Major
2. Select an amount from the appropriate multi-day matrix cell D (midpoint) ..... \$ 1845
3. Multiply line 2 by number of days of violation minus 1 [or other number, as appropriate (provide narrative explanation)]  
[180 days - 1 day = 179 days. 179 days x \$1295] ..... \$330,255
4. Add line 1 and line 3 ..... \$343,710
5. Percent increase/decrease for good faith ..... 0<sup>1</sup>
6. Percent increase/decrease for willfulness/negligence ..... 0
7. Percent increase for history of noncompliance ..... 0
8. Total lines 5 thru 7 ..... 0
9. Multiply line 4 by line 8 ..... N/A
10. Calculate economic benefit ..... 0
11. Add lines 4, 9, and 10 for proposed penalty amount  
To be sought at hearing ..... \$343,710

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<sup>1</sup> For the purposes of settlement negotiations, Items 5 - 10 were determined to be zero. EPA serves the right to reexamine these factors using the criteria in the RCRA Civil Penalty Policy if the case does not settle.

# CONFIDENTIAL SETTLEMENT COMMUNICATION

## RCRA PENALTY CALCULATION WORKSHEET

Company Name: The Dow Chemical Company  
Address: Plaquemine, Louisiana

Requirement Violated: Count Two - Failure to Meet Land Disposal Restrictions  
L.A.C. 33:V.2223.A. [40 C.F.R. § 268.40]

1. Gravity based penalty from matrix (midpoint) ..... \$ 13,455
  - (a) Potential for Harm ..... Moderate
  - (b) Extent of Deviation ..... Major
2. Select an amount from the appropriate multi-day matrix cell D (midpoint) ..... \$ 1845
3. Multiply line 2 by number of days of violation minus 1 [or other number, as appropriate (provide narrative explanation)]  
[180 days - 1 day = 179 days. 179 days x \$1295] ..... \$330,255
4. Add line 1 and line 3 ..... \$343,710
5. Percent increase/decrease for good faith ..... 0<sup>2</sup>
6. Percent increase/decrease for willfulness/negligence ..... 0
7. Percent increase for history of noncompliance ..... 0
8. Total lines 5 thru 7 ..... 0
9. Multiply line 4 by line 8 ..... N/A
10. Calculate economic benefit .....
11. Add lines 4, 9, and 10 for proposed penalty amount  
To be sought at hearing ..... \$343,710

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<sup>2</sup> For the purposes of settlement negotiations, Items 5 - 10 were determined to be zero. EPA serves the right to reexamine these factors using the criteria in the RCRA Civil Penalty Policy if the case does not settle.